

UNITED STATES COURT OF APPEALS
THE NINTH CIRCUIT

In the Matter of: RUPANJALI SNOWDEN,
Debtor.

No.: 13-35291

DC No. 2:12-cv-1095-RSL

RUPANJALI SNOWDEN, Debtor,
Appellant,

U.S. District Court for Western
Washington, Seattle

Bankruptcy Case No. 09-10318

v.

Bankruptcy Internal Appeal No. 12-S029

CHECK INTO CASH OF WASHINGTON,
INC,

**APPELLANT RUPANJALI SNOWDEN'S
DESIGNATION OF RECORD ON
APPEAL AND STATEMENT OF ISSUES**

Appellee.

I. DESIGNATION OF RECORD ON APPEAL

<u>DOCUMENT</u>	<u>DESCRIPTION</u>
Docket No. 31-1	U.S. Bank Statements (Feb. 10, 2009 – Mar. 9, 2009)
Docket No. 31-2	Check Into Cash Consumer Loan Agreement
Docket No. 31-3	Check Into Cash's "Guidelines for Bankruptcy and CCCS Accounts"
Docket No. 31-4	Check Into Cash's "Guidelines for Bankruptcy and CCCS Accounts"

APPELLANT RUPANJALI SNOWDEN'S DESIGNATION OF THE
RECORD AND ISSUES ON APPEAL- 1

HENRY, DEGRAAFF & MCCORMICK.
1833 N 105TH ST, STE 200
SEATTLE, WASHINGTON 98133
telephone (206) 330-0595
fax (206) 400-7609

1	Docket No. 31-5	PACER search results, dated Feb 17, 2010
2	Docket No. 31-6	Bankruptcy Notice of Creditor's Meeting Under 11 U.S.C. § 341
3	Docket No. 31-7	Rupanjali Snowden Bankruptcy Petition, Schedule F
4	Docket No. 31-8	Personal Check for \$575.00 used as collateral for payday loan
5	Docket No. 31-9	Printout of certain pages from Check Into Cash's website
6	Docket No. 31-10	Printout of electronic stop payment order
7	Docket No. 31-11	Table of Attorney's Fees and Incurred by Ms. Snowden in connection with this Motion for Sanctions
8	Docket No. 31-12	Printout of report from PACER Case Locator, dated Nov. 2, 2010
9	Docket No. 31-13	Collection notes from Check Into Cash's Sequim office
10	Docket No. 31-14	Printout of collection notes from Check Into Cash's corporate office
11	Docket No. 31-15	Check Into Cash's Policy Entitled "The day the Check is due"
12	Docket No. 31-21	E-mail from Lauren Hosie to Christina (Latta) Henry, dated May 20, 2009
13	Docket No. 31-24	JUDGMENT RE: SANCTIONS FOR STAY VIOLATIONS (Nov 16, 2010)
14	DOCKET No. 28-1	Bankruptcy Court Transcript of Evidentiary Hearing Held on November 1, 2010
15	Docket No. 29	Adversary Complaint, <i>Rodriguez v. Check Into Cash</i>
16	Docket No. 29-1	Bankruptcy Court Transcript of Evidentiary Hearing held on November 2, 2010; a.m. session
17	DOCKET No. 29-2	Bankruptcy Court Transcript of Evidentiary Hearing held on November 2, 2010; p.m. session
18	DOCKET No. 30-1	Bankruptcy Court Transcript of Oral Findings of Fact and Conclusions of Law re Evidentiary Hearing (November 16, 2010)
19	DOCKET No. 30-2	US District Court Order Affirming in Part / Reversing in Part Decision of Bankruptcy Court (February 21, 2012)
20	DOCKET No. 30-3	Bankruptcy Court Judgment After Remand (June 11, 2012)

DOCKET No. 32-5	Bankruptcy Court Transcript of Oral Findings of Fact and Conclusions of Law re JUDGMENT AFTER REMAND (June 7, 2012)
DOCKET No. 33-5	Bankruptcy Court Decision on Motion for Sanctions (December 10, 2009)
DOCKET No. 34	US District Court Order Affirming Decision of Bankruptcy Court (March 11, 2013)
DOCKET No. 33-6	Proof of Service (April 9, 2009) re Motion for Sanctions Against Check Into Cash
DOCKET No. 33-4	Adversary Complaint, <i>Rodriguez v. Check Into Cash</i>
DOCKET No. 33-3	Adversary Complaint, <i>Still v. Check Into Cash</i>
DOCKET No. 33-2	PACER Docket Printouts for Ryals v. Check Into Cash, Still v. Check Into Cash, Young v. Check Into Cash, Rodriguez b. Check Into Cash and Woodard v. Check Into Cash

II. STATEMENT OF ISSUES

Ms. Snowden filed the present action, No. 13-35291, as an appeal regarding the March 11, 2013, Final Order Affirming Decision of Bankruptcy Court (Docket No. 34) in District Court, Case No. 2:12-cv-01095-RSL. Ms. Snowden as the Appellant makes the following challenges to the Judgment After Remand (Docket No. 32-5,) as upheld by the District Court's Final Order:

1) The Bankruptcy Court made additional factual findings to support its Judgment After Remand. The Court's additional findings supplemented the Court's factual findings and a conclusion of law made on the record in its original ruling on November 16, 2010. The Bankruptcy Court affirmed its prior damage award for Ms. Snowden, finding that she suffered Actual Damages in the form of emotional distress in the amount of \$12,000 under a clear and convincing legal standard and that she was entitled to punitive damages in the amount of

1 \$12,000. The court found that a reasonable person would suffer emotional distress if they were
2 in the same situation as Ms. Snowden.

3 Under 11 U.S.C. §362(k), an individual injured by any willful violation of a stay
4 provided by this section *shall* recover actual damages, including costs and attorneys' fees, and, in
5 appropriate circumstances, may recover punitive damages. In 2010, the Ninth Circuit Court of
6 Appeals in *Sternberg v. Johnston*, 595 F.3d 937 (9th Cir.), *cert. denied*, 131 S. Ct. 102 (2010),
7 found that attorney fees under 11 U.S.C. §362(k) are limited, finding that attorney fees incurred
8 in a separate action for sanctions are not "actual damages." In Ms. Snowden's case, 362(k)'s
9 mandatory award of actual damages necessitated discovery and litigation that are inherent in a
10 statute intended to protect an individual debtor's fresh start as a private right of action. Should
11 the Court find the Ninth Circuit's holding in *Sternberg v. Johnston*, 595 F.3d 937 (9th Cir. 2010),
12 *cert. denied*, 131 S. Ct. 102 (2010) disallowing attorney fees when pursuing sanctions is a
13 misinterpretation of 11 U.S.C. §362(k)?
14

15 2) Check Into Cash made an offer to return the funds collected in violation of the stay,
16 along with funds to cover some of the resulting overdraft fees and an estimated amount of
17 attorney fees, on May 20, 2009, that was presented as an offer of settlement that would have
18 required the Appellant Snowden to forego her rights to seek compensation for other damages
19 allowed under 11 USC §362(k). The District Court held that the Bankruptcy Court had properly
20 found that Check Into Cash's May 20, 2009, offer to repay the money taken in violation of the
21 bankruptcy stay sufficiently remedied the stay violation, such that, under *Sternberg*, the
22 Bankruptcy Court could not award attorney fees incurred thereafter. Did the District Court err in
23 upholding the findings of the Bankruptcy Court that a conditional offer to stop a continuing
24
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26
27

1 violation of the Automatic Stay remedied the stay violation, cutting off Appellant's right to
2 further attorney fees under *Sternberg*?

3 3) The Bankruptcy Court found that, under *Sternberg*, the Debtor was not entitled to
4 attorney fees through the October 8, 2009 hearing where the Court found that Check Into Cash
5 had violated the automatic stay, even though the issue of damages had not yet been argued or
6 decided. Did the District Court err in affirming the Bankruptcy Court's holding that *Sternberg*
7 precluded attorney fees for proving that a stay violation had occurred?

8 4) Ms. Snowden received a ruling on October 8, 2009 from the Bankruptcy Court (see
9 written findings , docket No. 33-5) that Check Into Cash violated the automatic stay by
10 withdrawing funds from her bank account via an electronic funds transfer withdrawal. Check
11 Into Cash failed to repay the \$525 that was the subject of the automatic stay violation and the
12 \$370 in overdraft fees to Ms. Snowden under the October 8, 2009 order. Not until it was ordered
13 by the court to do so on November 17, 2010 did Check Into Cash pay the amount from the
14 October 8, 2009 order.

15 Under 11 U.S.C. §362(k) the Debtor is entitled to attorney fees incurred to ensure
16 enforcement of the automatic stay as actual damages as interpreted by *Sternberg v. Johnston*, 595
17 F.3d 937 (9th Cir. 2010), *cert. denied*, 131 S. Ct. 102 (2010). Thus, did the Bankruptcy Court err
18 in not awarding attorney fees incurred through the end of the evidentiary hearing in November
19 2010 as actual damages under 11 U.S.C. §362(k) and the *Sternberg v. Johnston* decision?
20

21 5) Did the Bankruptcy Court err in not awarding attorney fees incurred through the end
22 of the evidentiary hearing in November 2010 under 11 U.S.C. §105?
23

24 6) Did the Bankruptcy Court err in not making an explicit finding of bad faith willful
25 misconduct, allowing attorney fees pursuant to 11 U.S.C. §105?
26

1 7) In upholding this finding, did the District Court err in finding that the Bankruptcy
2 Court *could not* award attorney fees under §105 that were not available under §362(k)?

3 8) Ms. Snowden alleges that Check Into Cash continued its violation of the automatic
4 stay through November 2010 due to failure to cure or remedy their automatic stay violations.
5 Check Into Cash appealed the Bankruptcy Court's judgment on sanctions, the Debtor was forced
6 to defend both the ruling that the creditor violated the automatic stay and the award of sanctions
7 for that violation. Under 11 U.S.C. §362(k) is Ms. Snowden entitled to attorney fees for
8 defending any appeal stemming from that order?
9

10 DATED this 24th day of April, 2013.

11 HENRY, DEGRAFF & MCCORMICK, P.S.

12 By: /s/ Christina L. Henry

13 Christina L. Henry, WSBA# 31273

14 Jacob D. DeGraaff, WSBA# 36713

15 Attorneys for Rupanjali Snowden

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on April 24th, 2013, I electronically filed the Appellant Rupanjali
18 Snowden's Designation of the Record and Issues on Appeal to Clerk of the Court using the
19 CM/ECF System which will send notification of such filing to the below counsel of record.

20 Amit D. Ranade, WSBA# 34878
21 adr@hcmp.com
22 Hillis Clark Martin & Peterson, P.S.
23 1221 Second Avenue, Suite 500
24 Seattle, WA 98101
25 Tel# 206-623-1745
26 Fax# 206-623-7789

Alexander M. Wu, WSBA# 40649
amw@hcmp.com
Hillis Clark Martin & Peterson, P.S.
1221 Second Avenue, Suite 500
Seattle, WA 98101
Tel# 206-623-1745
Fax# 206-623-778

27 DATED this 24th day of April, 2013.

/s/ Christina L. Henry

Christina L. Henry, WSBA #31273

Attorney for Rupanjali Snowden